



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

v. Dickens, 3 Dowl. R., 171. And in *Norton v. Powell*, 4 Man. & G., 42, it was held that a guaranty may lawfully be given on Sunday by one tradesman to another for the faithful services of a commercial traveler to be employed by the latter. In both of the above cases, however, the Court seems to revert to the earlier construction of the statute. In *Wolton v. Gavin*, 15 Jur., 329, it was held that an army enlistment may be validly made on Sunday. And in *Stallard v. G. W. Ry. Co.*, 2 Best. & S., 419, the Court holds that a railroad company may lawfully transact the ordinary business of checking baggage on Sunday.

The foregoing decisions seem to show that it has been firmly established that the procurement of bail by a person deprived of his liberty, through confinement in a prison, may be lawfully done on Sunday, as coming within the exception of an act of necessity or charity; and that a note given in consideration of the accomplishment of that office of charity is perfectly valid and enforceable although made on Sunday.

THE EFFECT OF MARRIED WOMAN'S ACTS UPON THE HUSBAND'S LIABILITY FOR THE WIFE'S TORTS.

At common law the husband, as an inevitable incident of marriage became responsible for the misconduct of the wife and answerable in damages for her torts. In 2 *Kent's Commentaries* 149 the author, discussing the rights and liabilities which grow out of the marital relation says, "the husband is liable for the torts of the wife committed during coverture. If committed in his company or by his order, he alone is liable. If not, they are jointly liable, and the wife must be joined in the suit with the husband.

The torts of the wife for which the husband could be held liable at common law may be conveniently divided into four classes. (1) Where the act is committed by the wife during the husband's absence and without his knowledge. (2) Where the husband, although absent, induced the wife to do the tortious act. (3) Where the husband was present but the wife acted entirely of her own accord. (4) Where the husband is present and the act is done in his company and by his encouragement or persuasion. It is to torts arising under subdivision (1) that this article is

especially adapted, and it is interesting to observe how these common law principles have been dealt with in the different jurisdictions since the enactment of the Married Woman's Property Act.

In a recent case, *Poling v. Pickens*, 73 S. E. (W. Va.), 251, it was held that the husband was liable for slanderous words spoken by the wife although he was absent at the time and notwithstanding the fact that there was a married woman's property act in that State.

Declaratory of the common law rule is an early English decision, *Head v. Briscoe*, 5 Carr. & Payne, 484, which holds in substance that when the wife commits a libel against a person, even during the temporary or permanent absence of the husband, unless such separation caused the legal relation of husband and wife to cease, the husband shall be answerable for her tort. About fifty years after this decision was rendered Parliament passed the Married Woman's Property Act. In this act there was no express provision relieving the husband from liability for his wife's torts. and consequently in a later case it was held that husband and wife were properly joined in an action where recovery was sought for a tort committed by the wife. *Seroka v. Kallenberg*, 55 Law J. (N. S.), Q. B. D., 375.

So in New York the common law rule making the husband liable for the torts of the wife has not been abrogated by the enactment of statutes allowing suits to be brought against married women as if they were sole. Nor has such result been brought about by statutes giving the wife absolute control of her property. *Fitzgerald v. Quann*, 109 N. Y., 441. And *Fowler v. Chichester*, 26 Ohio State, 9, is in accord with the principal case in holding that the statutes "concerning the rights and liabilities of married women" have not changed the common law rule in regard to the husband's liability for the wife's torts. And it further declares that in an action against husband and wife for slanderous words spoken by the wife exemplary damages may be allowed. But the Tennessee court, recognizing the common law doctrine as laid down in *Fowler v. Chichester*, *supra*, presents a modification of the rule and declares that while the husband is liable under the circumstances of that case he can only be held to answer for compensatory damages. The reasoning of the Court upon which

this modification is based proceeds upon the theory that since exemplary damages are given for a flagrant wrong, the husband, who was absent at the time and in no way participated in the misconduct, should only be held to compensatory damages. And similarly in *Taylor v. Pullen*, 152 Mo., 434, it was said with respect to the married woman's act of that State, *expressio unius exclusio alterius*," and accordingly where husband and wife were joined for the wife's slanderous words the Court held the husband liable. Upon the same principle North Carolina holds the husband liable for words spoken by the wife during his absence and without his knowledge or encouragement. *Presnell v. Moor*, 120 N. C., 390.

Contrary to the doctrine of the principal case and the succeeding line of authorities, many States refuse to place a strict construction upon the Married Woman's Act, and consequently by implication or a process of judicial legislation the following States hold that statutes giving the wife absolute control of her property necessarily exonerate the husband from liability for her torts.

Thus in *Lane v. Bryant*, 100 Ky., 138, the Court holds that since the liability of the husband at common law for the torts of the wife was based upon the idea that upon marriage he acquired control of her property, any legislative act which gives the wife control of her estate destroys the reason for the common law rule and by implication relieves the husband from liability. Thereupon a judgment rendered against husband and wife for slanderous words spoken by her in his absence was reversed and remanded. The Utah court in a similar case held that the intervention of a statute giving the wife control of her property during coverture removed the husband's liability for her torts. *Culver v. Wilson*, 13 Utah, 129. In an almost evenly divided court it was held in *Martin v. Robson*, 65 Ill., 132, that while the statutes giving married women control of their property "do not expressly repeal the common law rule that the husband is liable for the torts of his wife, they have made such modifications of his rights and her disabilities as wholly to remove the reason for the liability." So the husband was held not liable for the tort of the wife in speaking slanderous words. And the Louisiana court removed the husband's liability by implication under similar circumstances when the wife uttered slanderous words without the knowledge

or participation of the husband. *McClure v. McMartin*, 104 La., 496. The same doctrine is established in Kansas. See *Norris v. Corkill*, 32 Kans., 409.

To remove all possibility of doubt, to prevent continuous dissension among the judges of the respective courts, and to determine once for all the law that should govern in the particular jurisdiction, it has been found expedient to enact statutes in many States relieving the husband by express language from liability for the wife's torts. Alabama, Massachusetts, Indiana, and Michigan are among the States which have enacted express statutes upon the subject.

Upon a careful examination of the authorities there can be no doubt that the decided weight of authority is in support of the common law rule making the husband liable for the torts of the wife irrespective of the statute giving the wife absolute control of her property. Where there is no express statute upon the subject comparatively few States exonerate the husband from liability by reading into the Married Woman's Act, contrary to the wording of the statute, language sufficient for that purpose.

THE EFFECT UPON A PRIOR WILL OF THE REVOCATION OF A SECOND
WILL CONTAINING A REVOKING CLAUSE.

The authorities are in irreconcilable conflict as to the effect of the destruction of a second will containing a revoking clause upon a prior will, in the absence of any statutes.

In the recent case of *Blackett v. Ziegler*, 133 N. W. (Iowa), 901, the testatrix executed a will in 1895. She subsequently made another will which contained a clause revoking the will of 1895. The later will was destroyed by the testatrix. The Court held that the destruction of a second will which expressly revoked a former will does not raise any presumption that the former will is thereby revived, but it is a question of the testator's intent, to be gathered from admissible parol testimony.

This case follows the rule of the ecclesiastical courts of England, which is stated in the case of *Helyar v. Helyar*, 1 Lee Ecc., 472. This rule is that the revival of a former uncanceled